

Richard Levin (RL 1651)
CRAVATH, SWAINE & MOORE LLP
Worldwide Plaza
825 Eighth Avenue
New York, NY 10019
Telephone: (212) 474-1000
Facsimile: (212) 474-3700

*Attorneys for the New York City Off-Track
Betting Corporation*

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

In re

NEW YORK CITY OFF-TRACK BETTING
CORPORATION,

Debtor.¹

Chapter 9

Case No. 09-____(____)

**DECLARATION OF ROBERT J. GARRY IN SUPPORT OF THE CHAPTER 9
PETITION AND THE STATEMENT OF QUALIFICATIONS**

I, Robert J. Garry, declare as follows:

Background

1. I am the Executive Vice President and Chief Financial Officer for New York City Off-Track Betting Corporation (“**NYC OTB**”). I make this declaration in support of NYC OTB’s voluntary petition under chapter 9 of the Bankruptcy Code initiating this chapter 9 case and the statement of qualifications under section 109(c) of the Bankruptcy Code filed concurrently herewith. Except as to those

¹ NYC OTB’s address is 1501 Broadway, New York, NY 10036. The Debtor’s tax identification number is 13-2664509.

matters set forth on information and belief, I have personal knowledge of the facts set forth herein and if called as a witness herein I could testify competently to such facts.

2. I attended Iona College where I obtained a Bachelors of Business Administration in Accounting. I have over forty years of professional experience, with two years experience in municipal financial accounting. I have worked as the Chief Financial Officer of NYC OTB since November 19, 2007. For the five years prior to working for NYC OTB, I was the Corporate Controller of Yonkers Racing Corporation. Prior to my tenure at Yonkers Raceway, I served as the Executive Vice President and Chief Financial Officer of the National Thoroughbred Racing Association for two years. I served as the Director of Finance and Administration for over 27 years for the United States Tennis Association.

3. I am familiar with the historical situation that NYC OTB has faced, and I have personal knowledge of NYC OTB's finances, the situation that led to the 2008 Closure Plan (as defined below) and NYC OTB's current and projected financial situation.

Exhibits Attached To This Declaration

4. Attached to this declaration are the following documents: Exhibit A - Audited Financial Statements, Years Ended June 30, 2008 and 2007; Exhibit B - Audited Financial Statements and Supplementary Information, Nine-Month Period Ended March 31, 2009; and Exhibit C - Unaudited Financial Statements, Six-Month Period Ended September 30, 2009. Each exhibit attached hereto is a true and correct copy of the document described herein.

NYC OTB Accounting and Finances

5. NYC OTB maintains its records, prepares its budget and issues its audited financial statements in accordance with generally accepted accounting principles (GAAP) as promulgated in the Governmental Accounting Standards, issued by the Comptroller General of the United States.

NYC OTB's Operations

6. Pari-mutuel wagering is a betting system in which all bets of a particular type on a particular race are placed together into a commingled pool, a certain amount (the “**Wagering Commission**”) is removed for the benefit of the “house”, in this case, the tracks and the off-track betting corporations (the “**OTBs**”), and the payoff is calculated by allocating the remaining pool among all winning wagers. In the pari-mutuel system, wagering customers determine the payoff odds, and the bettors are not wagering against “the house”, as is the case with most fixed-odds gambling, in which the final payout is determined before the wager is placed.

7. NYC OTB receives a percentage (the “**Wagering Commission Rate**”) of the total dollars wagered through its services on a race (the “**Handle**”), as well as a statutorily imposed surcharge on certain bets. While the Wagering Commission Rate varies for different types of bets, it does not vary based on the number of wagers placed or the number of winning or losing customers. The winning bettors receive approximately 80% of the amounts wagered on each race before consideration of surcharge. In addition, NYC OTB must distribute certain percentages of the Handle to local governments, New York State (“**New York**” or

the “**State**”) and the State’s horse racing industry, composed of various horse race tracks and horse breeding funds. NYC OTB also makes payments to certain horse race tracks, both in- and out-of-state, under its negotiated simulcast contracts. All mandatory distributions made to these various entities come from the Wagering Commission actually received by NYC OTB, based on a percentage of the higher Handle figure. In addition payments are made to local governments from the surcharge.

8. For the last audited 12-month period, ended June 30, 2008, NYC OTB processed a total Handle of \$998.2 million. The winning bettors received \$760.9 million of this amount, leaving NYC OTB with \$244.7 million in Wagering Commission as its actual revenue after including \$7.4 million for surcharge, uncashed tickets and other operating revenues. NYC OTB made the following mandatory distributions for the same period: \$93.2 million to the State’s horse racing industry, \$20.2 million to New York City (the “**City**”) and other local governments, and \$15.2 million to the State. This left \$116.1 million for NYC OTB to cover \$133.9 million (excluding certain non-cash expenses) in operating expenses. Consequently, it incurred an operating deficit of \$17.8 million for the year, despite an operating profit margin of approximately 45%.

Deterioration of NYC OTB’s Finances Over the Past Few Years

9. Over time, higher mandatory distributions required by the State Legislature, combined with increases in the cost of operating in New York City, left NYC OTB with no residual income to turn over to the City. In 2001, the Legislature reduced the Wagering Commission Rate for races conducted at

racetracks operated by the New York Racing Association (“NYRA”), reducing NYC OTB’s Wagering Commissions by \$5.5 million annually. Between 2003 and 2005, additional legislatively imposed payment obligations increased NYC OTB’s mandatory distributions by an average of \$7.8 million annually. These additional payment obligations included the introduction of a regulatory fee (2003) and an increase in the regulatory fee (2005) to support the operations of the New York State Racing and Wagering Board (the “**Racing and Wagering Board**”) and “maintenance of effort” payments (also known as “hold harmless” payments) (2003) to support and protect the harness racing industry from new competition created by the nighttime simulcasting of out-of-state thoroughbred races.

10. As a result of these factors, NYC OTB has operated at a deficit for the last seven years. For the fiscal years ending June 30, 2006, 2007 and 2008, and the nine-month period ending March 31, 2009, NYC OTB had operating deficits of \$121,648,000, \$30,060,000, \$76,485,000 and \$25,142,000, respectively. NYC OTB projects an annual operating deficit of \$32,700,000 for the fiscal year ending March 31, 2010. These historical deficits have led to an accelerated degradation of NYC OTB’s liquidity position. This financial deterioration took NYC OTB from \$18.6 million in non-restricted cash and cash equivalents on June 30, 2006, to a projected zero reserve by December 30, 2009, assuming all current obligations are timely satisfied.

NYC OTB’s Cost-Cutting Measures

11. NYC OTB looked both outward and inward in its attempt to prevent insolvency. While seeking to have the State Legislature rationalize the flawed and

burdensome legislative distribution scheme, NYC OTB also began making the difficult decisions needed to reduce operational costs.

12. In February 2004, NYC OTB reduced its headquarters staff by laying off 17% of its management personnel. This led to first-year savings of more than \$700,000. NYC OTB continued by closing underperforming branches, reducing employees' overtime hours, surrendering a quarter of its headquarters space, reducing supply purchases, decreasing security expenses and reducing energy costs. The management and staff cuts alone resulted in savings of nearly \$25 million by the end of the 2008 fiscal year. The other cost-cutting initiatives resulted in additional savings totaling nearly \$20 million by the end of the 2008 fiscal year. Thus, the total savings resulting from NYC OTB's initiatives during the five-year period through the end of the 2008 fiscal year were nearly \$45 million. NYC OTB spent \$100,000 in one-time cash costs to achieve these annual savings.

| Cost Savings Fiscal Years 2004 through 2008 | | | | | | |
|--|---------------|---------------|---------------|---------------|---------------|--------------|
| | FY2004 | FY2005 | FY2006 | FY2007 | FY2008 | Total |
| Rent/RE Taxes Savings from Closed Branches | | 45,000 | 303,000 | 697,000 | 498,000 | 1,543,000 |
| Staff Reduction Savings | 712,000 | 2,772,000 | 6,215,000 | 7,573,000 | 7,528,000 | 24,800,000 |
| Sunday Overtime | | 1,089,000 | 1,096,000 | 618,000 | 722,000 | 3,525,000 |
| Regular Overtime | | 378,000 | 125,000 | 107,000 | 537,000 | 1,147,000 |
| FICA/Medicare Tax Savings @ 7.65% | 54,000 | 324,000 | 569,000 | 635,000 | 672,000 | 2,254,000 |
| Marketing | 690,000 | 780,000 | 1,335,000 | 1,471,000 | 1,471,000 | 5,747,000 |
| Rent (1501 Broadway) | | | | 1,099,000 | 1,117,000 | 2,216,000 |
| Miscellaneous Supplies | | 250,000 | 320,000 | 300,000 | 300,000 | 1,170,000 |
| Guard Service | | 180,000 | 258,000 | 263,000 | 263,000 | 964,000 |
| Telephone Switches | 340,000 | 156,000 | 156,000 | 156,000 | 156,000 | 964,000 |

| Cost Savings Fiscal Years 2004 through 2008 | | | | | | |
|--|---------------|---------------|---------------|---------------|---------------|--------------|
| | FY2004 | FY2005 | FY2006 | FY2007 | FY2008 | Total |
| Equipment | | 70,000 | 100,000 | 85,000 | 85,000 | 340,000 |
| Total Savings | 1,796,000 | 6,044,000 | 10,477,000 | 13,004,000 | 13,349,000 | 44,670,000 |

The NYC OTB 2008 Closure Plan

13. After repeated attempts to petition the State Legislature to alter the legislative distribution scheme failed, NYC OTB faced insolvency. Its management developed a plan (the “**2008 Closure Plan**”) for the complete shutdown and wind up of all aspects of NYC OTB’s operations beginning on Sunday, June 15, 2008. The 2008 Closure Plan dealt with the closing of all branches, all teletheaters, all restaurant wagering facilities, the Advance Deposit Wagering operations, NYC OTB’s headquarters at 1501 Broadway and the satellite warehouse facility. The 2008 Closure Plan also contemplated the layoff of all 1,466 employees of NYC OTB, the winding up of NYC OTB’s real estate interests, the satisfaction of NYC OTB’s personal property and the disposition of claims against NYC OTB.

14. However, before the 2008 Closure Plan could be executed, Governor David A. Paterson announced the take-over of NYC OTB by the State and instructed the NYC OTB workforce to report to work the next day. Within 24 hours, Chapter 115 of the Laws of 2008 was passed by the Legislature, ratifying the State’s takeover and making certain limited changes to the Racing, Pari-Mutuel Wagering and Breeding Law (the “**Racing Law**”) in an effort to provide NYC OTB with additional sources of revenue for its operations, including increasing the amount of the surcharge that NYC OTB could retain on winning bets and raising

the take-out amount on bets made on races conducted at NYRA tracks. On June 17, 2008, Governor Paterson signed the new legislation into law.

15. After the board of directors, with the assistance from a variety of state agencies, conducted a comprehensive assessment of the operations of NYC OTB, Governor Paterson appointed Meyer S. Frucher as the new Chairman in June 2009.

NYC OTB's Outstanding Debt Obligations

16. NYC OTB, as of October 31, 2009, had \$82,863,817 recorded on its books as accounts payable and accrued expenses.² As of October 31, 2009, NYC OTB owed \$7,991,307 in governmental statutory claims, which are claims prescribed by statute based on the Handle and owed to any regional off-track betting corporation created under section 502 of the Racing Law or any governmental unit, and \$43,693,106 to other racing industry claimants. The only secured claim against NYC OTB as of October 31, 2009 is held by Xerox Corporation for \$243,298. As of October 31, 2009, NYC OTB held \$2,361,540 in wagers, winnings and deposits for wagering for customers. NYC OTB has accrued \$13,716,770 for employees' accrued wages, salaries, leave pay and benefits in addition to \$8,548,548 in postemployment accrued welfare and accrued pension liabilities. Finally, as of October 31, 2009, NYC OTB owed \$6,309,248 in general unsecured claims.

² This figure does not include \$201,020,000 in accrued long term postemployment benefits.

NYC OTB's Fiscal Year 2009-10 Cash Flow

17. As of October 31, 2009, NYC OTB had operating cash of \$11,098,000, as compared to the \$82,863,818 in accounts payable and accrued expenses. Current cash flow projections indicate that the NYC OTB will run out of operating cash in December, 2009, assuming all obligations are timely satisfied. In addition, approximately \$17,200,000 of the \$43,693,106 payable to other racing industry claimants described above is due to New York regional harness tracks for maintenance-of-effort payments. The Racing and Wagering Board is currently reviewing the amount due for accuracy and may direct NYC OTB to pay at any time.

Fiscal Year 2009-10 Revenues

18. NYC OTB's revenues are driven by the amount of Handle bet during the year. Based on the first seven months of fiscal year 2009-10, NYC OTB projects that the Handle for the full fiscal year will be about \$820,000,000. After paying winning bets, NYC OTB projects that its gross revenue will be about \$203,000,000, comprised of: gross Wagering Commissions and breakage of \$171,400,000; unclaimed tickets of \$2,600,000; distributable surcharge and surcharge breakage of \$3,700,000; retained surcharge for operations of \$19,200,000; surcharge from other OTBs of \$1,900,000; capital acquisition fund revenues of \$3,100,000; and interest income and other revenues of \$1,100,000.

Fiscal Year 2009-10 Expenditures

19. Expenditures are comprised of two major categories: (1) statutory expenses, which consist of mandatory distributions to the racing industry and to

New York State and local governments; and (2) operating expenses, which are the expenses incurred in running the day to day operations of NYC OTB. For the 2009-10 fiscal year NYC OTB projects mandatory distributions of \$97,400,000 and total operating expenses of \$138,300,000.

20. As of November 1, 2009, NYC OTB employed 1,343 people with an annual payroll, including salaries, wages and overtime, of approximately \$62,500,000. In addition, NYC OTB provides fringe benefits, including health and medical coverage, welfare funds, vacation and sick leave, at an annual cost of \$12,000,000, and contributes approximately \$7,500,000 annually to the employee pension plan, the New York City Employees Retirement System (NYCERS). NYC OTB also provides other postemployment benefits to its retirees and their spouses at an annual cost of approximately \$15,000,000.

21. NYC OTB is comprised of 55 branches, three teletheaters, eight restaurant locations, one warehouse and a headquarters operation that occupies three floors at 1501 Broadway in Manhattan. NYC OTB's largest operating expense, after personnel related expenses, is approximately \$22,000,000 for occupancy expenses, including rent, real estate taxes, heat, light and utilities, cleaning, and guard and security services.

22. In accordance with an agreement with the City, NYC OTB currently pays \$3,250,000 to broadcast races into individual homes in New York City via government cable channels 71 and 73. NYC OTB pays approximately \$2,200,000 in simulcast fees to show the races in its branches, teletheaters and restaurant facilities, and \$2,500,000 for outside computer services to process the customers'

betting activities. The use of telephones and data lines cost another \$2,400,000, while equipment rental, and maintenance and repairs cost \$1,500,000. Insurance protection for the overall operations costs \$2,700,000. NYC OTB pays about \$850,000 annually for audit and other professional fees. Other annual miscellaneous expenses total approximately \$1,900,000.

NYC OTB's Customer Policies

23. Many NYC OTB customers maintain wagering accounts with NYC OTB, from which they place bets and to which their winnings are credited. NYC OTB maintains the customer funds in separate, segregated accounts. Some customers who maintain accounts or have other dealings with NYC OTB do so on a confidential basis. For example, NYC OTB maintains a list of customers who have specifically requested that they not receive any mail from NYC OTB, to protect their confidentiality.

The Necessity of Filing a Chapter 9 Petition

24. After years of mandatory distributions based on percentages of the Handle instead of percentages of the Wagering Commission revenue it actually receives or after allowance for NYC OTB's costs and expenses, NYC OTB has been unable to reinvest in its own business and has debts substantially greater than its current ability to repay. It has not had the resources to build modern racing emporiums that exist in neighboring states, nor has it been able to invest in new technologies and channels of product distribution that will attract a wider demographic and create operating efficiencies to substantially lower costs. NYC

OTB is currently not paying its debts as they come due, and it expects to exhaust its cash in December 2009, assuming current obligations are timely satisfied.

25. NYC OTB has determined that filing its chapter 9 petition is the only practicable way to obtain the time and protection it needs to carry out the vital operational changes required to access capital and to return to profitability and thereby fulfill its statutory mission to provide reasonable revenue for the support of the State, the City, and the horse racing industry.

Executed this 3rd day of December 2009, at New York, New York.

I declare under penalty of perjury that the foregoing is true and correct according to the best of my knowledge, information and belief.

s/ Robert J. Garry

Robert J. Garry